IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.952 OF 2004
WITH
CIVIL APPLICATION NO.823 OF 2005

M/s.Ashok Leyland Finance Ltd. ...Appellant.
Vs.
Shreeprakash S. Shukla. ...Respondent.
....
Mrs.Shakuntala Joshi for the Appellant.
Mr. R. R. Sharma for the Respondent.
.....

CORAM : DR. D.Y. CHANDRACHUD, J.

November 30, 2005.

P.C.:

This Appeal from Order has been directed against an order passed by the City Civil Court on 27th October 2004 making the Notice of Motion absolute. The appeal was admitted on 21st February 2005. During the pendency of the Appeal from Order, a Learned Single Judge of this Court passed an order dated 10th November 2004 recording the statement of the Appellant that an amount of Rs.24,13,935/- was due and payable. According to the Respondent, an amount of Rs.10,93,520/- was due and payable. The Respondent was directed to deposit an amount of Rs.11 lakhs

within a period of two weeks failing which it was directed that the Court Receiver shall stand appointed as Receiver of five motor tankers. The Receiver was directed to take possession of the tankers. This order was carried in appeal to the Supreme Court. By an order dated 31st January 2005, the Supreme Court dismissed the Special Leave Petition. However, the statement of Counsel appearing on behalf of the Respondent was recorded to the effect that the Respondent was prepared to pay an amount of Rs.11 lakhs as directed by this Court, but that he should be granted the facility of payment through instalments. Liberty was given to the Respondent to apply within a period of ten days. Subsequently, the application of the Respondent was considered by this Court on 21st February 2005. The Respondent stated that he was ready and willing to deposit an amount of Rs.4 lakhs within a period of two weeks. The application was dismissed by a Learned Single Judge. The order of the Court records that three months' time had expired from the order dated 10th November 2004. Nothing had been paid and even at that stage, the Respondent was only in a position to pay an amount of Rs.4 lakhs and that too not immediately.

The possession of the vehicles was not handed over to the Court Receiver as directed. Eventually, in May 2005, possession of all the five vehicles was handed over to the Court Receiver.

This application has been moved by the Appellant for discharge of the Receiver and for permission to the Appellant to dispose of the vehicles in favour of the highest bidder on the basis of quotations received by the Appellant. The Appellant has stated that the sale proceeds will be adjusted towards the dues to be established in arbitration proceedings which are pending before the Arbitral Tribunal.

The Appellant has received an offer dated 31st May 2005 of Rs.21,25,000/- for the five motor tankers. Counsel appearing on behalf of the Respondent states that the Respondent should be furnished with an opportunity to obtain a higher bid for the five motor tankers forming the subject matter of this proceeding on as is where is basis. This request is not opposed by Counsel appearing on behalf of the Appellant. Accordingly, the Respondent shall have a period of two weeks to furnish to the

Appellant a higher bid than the bid which has been received by the Appellant for the five motor tankers. The Respondent will also personally be at liberty to submit a bid to the Appellant within a period of two weeks and it has been stated on behalf of the Appellant that if the Respondent furnishes a higher bid, the Appellant will have no objection to accept the same.

Having regard to the facts and circumstances, the Court Receiver shall stand discharged. The Respondent is at liberty to furnish a bid for five motor tankers within two weeks. In the event that the bid submitted by the Respondent is higher than the bid received by the Appellant, the Appellant has agreed to accept the aforesaid bid subject to the prospective purchaser depositing the bid amount forthwith together with the bid. In that event, the amount which is received by the Appellant shall be subject to the result of the Arbitration Proceedings which are pending before the Arbitral Tribunal. The appeal is accordingly disposed of.

Civil Application No.823 of 2005 is made absolute in terms of prayer clauses (a) and (b).